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Work programme of the Commission

Note by the Secretariat

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I. Background

1. At its forty-sixth session, in 2013, the Commission agreed that it should reserve time for discussion of UNCITRAL's future work as a separate topic at each Commission session (A/68/17, para. 310). To facilitate discussion and provide a comprehensive approach, this Note has been prepared to assist the Commission's consideration of its overall work programme and planning of its activities at this fifty-first session. It covers both current and possible future legislative work, as well as current and possible future non-legislative activities.

2. When setting UNCITRAL's work programme for the forthcoming period, the Commission may also wish to recall its decision at the forty-sixth session that it would normally plan for the period to the next Commission session, but that some longer-term indicative planning (for a three-to-five-year period) may also be appropriate (A/68/17, para. 305), bearing in mind that the budget cycle is currently biennial.

II. Summary of current legislative activities and proposals for future legislative work programme

A. Current legislative programme

3. Table 1 below sets out legislative work currently under way in the Commission's Working Groups. In addition to the texts to be completed at the current session, the table indicates possible completion dates, where it is anticipated those will fall within the next two Commission sessions (i.e. fifty-second or fifty-third sessions). Where work is at an early stage of development (e.g., Working Groups III and IV), it is difficult to assess the likely completion date and the work is indicated as "ongoing".

Table 1
Current legislative activity

		Potential completion date		
WG	*Current work topic*	*2018*	*2019*	*2020*
WG I	Introductory chapter on the work on MSMEs	x		
	Business registry guide	x		
	Simplified business entity guide	ongoing		
WG II	International commercial settlement agreements resulting from mediation	x		
WG III	Investor-State dispute settlement reform	ongoing		
WG IV	Cloud computing		x	
	Identity management	ongoing		
WG V	(i) Recognition of Judgments: Model Law and Guide to Enactment	x		
	(ii) Enterprise groups: Legislative Provisions and Guide to Enactment		x	
	(iii) Obligations of directors of group members in the period approaching insolvency		x	
	(iv) MSME insolvency	ongoing		
WG VI	Model Law on Secured Transactions User's Guide		x	
PPPs	PFIP Legislative Guide revision	x		

1. Progress of Working Groups

4. At its forty-seventh session, the Commission requested that the progress and status of the work of each Working Group, as set out in their reports, be collated and presented to the Commission, so as to establish context for each Working Group's suggestions for future work and for prioritization among existing and new topics to be clearer (A/69/17, para. 253). A brief summary of the progress of each Working Group is accordingly presented below.

Micro, Small and Medium-sized Enterprises (Working Group I)

5. Working Group I commenced its discussions on a draft legislative guide on a simplified business entity at its twenty-second session (February 2014) and on a draft legislative guide on key principles of a business registry at its twenty-eighth session (May 2017). The draft legislative guide on key principles of a business registry has been submitted for completion and adoption by the Commission at its current session. A document entitled "Reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs)", which is intended to provide the overall context for work undertaken by UNCITRAL in respect of MSMEs, has also been submitted for finalization and adoption.

6. The discussion on the draft legislative guide on a simplified business entity is ongoing and will become the focus of the forthcoming meetings of the Working Group, following finalization and adoption of the draft registry guide by the Commission in 2018.

Dispute Settlement (Working Group II)

7. At its sixty-second session (February 2015), the Working Group commenced its deliberations on enforcement of settlements agreements and continued those deliberations through its sixty-third (September 2015) to sixty-eighth (February 2018) sessions. The draft instruments on enforcement of international commercial settlement agreements resulting from mediation have been submitted for finalization and adoption by the Commission at its current session.

Investor-State Dispute Settlement Reform (Working Group III)

8. At its fiftieth session (2017), the Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS), and in particular: (a) to identify and consider concerns regarding ISDS; (b) to consider whether reform was desirable in light of any identified concerns; and (c) if the Working Group were to conclude that reform was desirable, to develop any relevant solutions to be recommended to the Commission.[1]

9. To date, the Working Group has held two sessions for deliberations (thirty-fourth (November–December 2017) and thirty-fifth (April 2018)).

Electronic Commerce (Working Group IV)

10. At its forty-eighth session (2015), the Commission requested the Secretariat to conduct preparatory work on identity management and trust services, cloud computing and mobile commerce, including through the organization of colloquiums and expert group meetings, for future discussion at the Working Group level following completion of the work on electronic transferable records (the UNCITRAL Model Law on Electronic Transferable Records was adopted by the Commission at its fiftieth session (2017)).[2] At its fifty-fifth session, (April 2017), the Working Group commenced its consideration of legal issues relating to identity management and trust services, as well as contractual aspects of cloud computing, pursuant to a request from

[1] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 264.

[2] Ibid., *Seventieth session, Supplement No. 17* (A/70/17), para. 358.

the Commission at its forty-ninth session (2016),[3] confirmed at its fiftieth session (2017).[4] Pursuant to a request from the Commission at its fiftieth session, an expert group meeting on contractual aspects of cloud computing was convened by the Secretariat in November 2017.[5]

11. At its fifty-sixth session (April 2018), Working Group IV continued its work on those two topics.

Insolvency Law (Working Group V)

12. At its forty-fourth session (December 2013), the Working Group commenced its deliberations on a legislative text to facilitate the cross-border insolvency of enterprise groups, which together with a guide to enactment is likely to be available for finalization and adoption by the Commission at its fifty-second session (2019). At its forty-sixth session (2014), the Working Group commenced its deliberations on a model law on the recognition and enforcement of insolvency-related judgments, which has been submitted for finalization and adoption by the Commission at its current session. At its fifty-first session (May 2017), the Working Group commenced its deliberations on the insolvency of micro, small and medium-sized enterprises (MSMEs), based upon the provisions of the UNCITRAL Legislative Guide on Insolvency Law; this work is ongoing.

13. In addition to the topics noted above, a draft commentary and recommendations on the obligations of directors of enterprise group companies in the period approaching insolvency (which supplements part four of the UNCITRAL Legislative Guide on Insolvency Law dealing with obligations of directors in the period approaching insolvency) has been prepared. It is likely that the text could be finalized and adopted at the same time as the draft legislative provisions and guide to enactment on facilitating the cross-border insolvency of enterprise groups.

Security Interests (Working Group VI)

14. At its thirty-second session (December 2017), following adoption of the Guide to Enactment of the UNCITRAL Model Law on Secured Transactions at the fiftieth session of the Commission (2017), Working Group VI commenced work on a practice guide to enactment of the UNCITRAL Model Law on Secured Transactions, in accordance with a mandate given by the Commission at its fiftieth session (2017).[6] Work on the practice guide continued at the Working Group's thirty-third session (April–May 2018).

2. Updating the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000)

15. At its fiftieth session, the Commission reaffirmed the mandate given to its Secretariat to update, as necessary, the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, involving experts. It also recalled that it had requested the Secretariat to consolidate the provisions of the Legislative Guide with the Model Legislative Provisions on Privately Financed Infrastructure Projects (2003).[7] In accordance with a request from the Commission, draft text updating the Legislative Guide has been referred for consideration at its current session.[8] As part of its deliberations on that draft text, the Commission may wish to consider what further work on the text might be needed and how that might be achieved, in particular whether working group time might be required.

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[3] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 235 and 353.

[4] Ibid., *Seventy-second session, Supplement no. 17* (A/72/17), para. 127.

[5] A/CN.9/WG.IV/WP.147, para. 7.

[6] *Official Records of the General Assembly, Seventy-Second Session, Supplement No. 17* (A/72/17), para. 227.

[7] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), paras. 18–21 and annex I.

[8] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), paras. 273–274 and 448.

B. Future legislative programme

1. Background

16. At its forty-sixth session, the Commission underscored the importance of a strategic approach to the allocation of resources to, inter alia, legislative development, in the light of the increasing number of topics referred to UNCITRAL for consideration (A/68/17, paras. 294–295). The Commission has emphasized the benefit of UNCITRAL's primary working method — that is, legislative development through formal negotiations in a working group (A/69/17, para. 249).

17. The Commission has also reaffirmed that it retains the authority and responsibility for setting UNCITRAL's work plan, especially as regards the mandates of working groups, though their role in identifying possible future work and the need to allow a working group the flexibility to decide on the type of legislative text to be produced were also recalled.[9]

18. Table 2 below sets out possible future work by the Commission. It is annotated to show whether the Commission has already discussed and decided to retain certain topics on its work agenda for further consideration at a future session or whether the topic is a new proposal for possible future work.

19. In addition to Table 2, the Commission may wish to consider the more detailed descriptions in the paragraphs following that table and the other documents referred to in this section when determining its future work programme.

Table 2
Possible future legislative activity

Subject area	*Topic*	*Document reference*	*Status*
MSMEs (WG I)	Contracting networks for MSMEs	Paras. 21–22 below; A/CN.9/925 and 954	Proposal
Dispute Settlement (WG II)	(a) Modernizing UNCITRAL Conciliation Rules (b) Notes on organizing mediation proceedings (c) Expedited arbitration (d) Adjudication in long term projects (e) Uniform principles on the quality and efficiency of arbitral proceedings	Paras. 23–24 below; A/CN.9/929, paras. 149–164.	Proposal
Investor-State Dispute Settlement Reform (WG III)	(a) Code of ethics (b) Concurrent proceedings	Paras. 25–26 below; A/72/17, paras. 242, 254	Currently WG III — possible inclusion in the work programme of WG II

[9] At its forty-sixth session (2013), the Commission confirmed that it would consider whether to refer proposals for future work to a Working Group by reference to four considerations: 1) whether the Commission was satisfied that the topic was likely to be amenable to harmonization and the consensual development of a legislative text; 2) whether the scope of a possible future text and the policy issues for deliberation were clear; 3) whether there existed a sufficient likelihood that a proposed legislative text would enhance the law of international trade; and, 4) whether proposed work would duplicate work undertaken by other law reform bodies (A/68/17, paras. 303 and 304).

Subject area	*Topic*	*Document reference*	*Status*
Electronic commerce (WG IV)	Mobile commerce	Paras. 27–28 below; A/70/17, para. 358	Request for preparatory work
	Single windows and paperless trade facilitation	Paras. 29–30 below; A/66/17, para. 240	Request to cooperate and contribute as appropriate to ongoing work in other organizations
Security interests (WG VI)	(a) Warehouse receipts (b) Intellectual property licensing (c) Alternative dispute resolution in secured transactions (d) Finance to micro business	Paras. 32–33 below; A/71/17, paras. 124–125; A/72/17, paras. 218–229	Decision to retain on work agenda for further discussion
Other topics	Judicial sale of ships	Paras. 34–36 below; A/CN.9/944	Proposal
	Civil law aspects of asset tracing and recovery	Para. 37 below; A/CN.9/WG.V/WP.154; A/CN.9/931, para. 95.	Proposal

2. Proposals relating to existing Working Group subject areas

MSMEs (Working Group I)

20. At its fiftieth session (2017), the Commission heard a proposal by the Government of Italy on non-equity modes of cooperation allowing businesses, prior to the creation of a legal personality, to contract with larger companies in supply chains as a network.[10] The Commission welcomed the willingness of the proponents to conduct additional research to develop the proposal further, so that it could come before the Commission in 2018 for a decision on whether the work should go forward and, if so, in what capacity.

21. The Commission will have before it a further proposal by the Government of Italy, document A/CN.9/954.

Dispute Settlement (Working Group II)

22. At its sixth-eighth session (February 2018), Working Group II discussed possible topics for future work.[11] These included (a) possible revision of the UNCITRAL Conciliation Rules, to take account of recent developments in that field; (b) preparation of notes on mediation, akin to the UNCITRAL Notes on Organizing Arbitral Proceedings, with the aim of having a complete set of mediation instruments including an explanation for practitioners; (c) a framework for expedited arbitration; (d) model legislative provisions and contractual clauses for adjudication in long-term projects, particularly in the construction industry; and (e) uniform principles on the quality and efficiency of arbitral proceedings, which could include emergency arbitration, arbitration clauses and non-signatory parties, legal privileges and international arbitration and other topics.

[10] Ibid., paras. 451–455, discussing the proposal set forth in A/CN.9/925.
[11] A/CN.9/934, paras. 149–164.

23. The Working Group recommended[12] that a mandate be sought for topics (a) and (b), and that work on topic (c) should be given priority for future work, together with topic (e).

Investor-State Dispute Settlement Reform (Working Group III)

24. At its fiftieth session, the Commission had before it Notes by the Secretariat on "Possible future work in the field of dispute settlement: Concurrent proceedings in international arbitration" (A/CN.9/915); and on "Possible future work in the field of dispute settlement: Ethics in international arbitration" (A/CN.9/916). For deliberation purposes, it was agreed in the Commission that the topic of investor-State dispute settlement reform would be considered in a comprehensive manner to also include the topics of concurrent proceedings and ethics.[13] After discussion, it was generally felt that work on concurrent proceedings and a code of ethics could form part of the discussions on investor-State dispute settlement reforms. In relation to concurrent proceedings, it was mentioned that work could be considered on guidance to arbitral tribunals and to the manner in which the matter had been addressed in international investment agreements. Regarding the topic of ethics, it was highlighted that aspects mentioned in paragraphs 38 and 39 of document A/CN.9/916 would deserve further consideration. It was further suggested that work on ethics could address the conduct of various participants in the arbitral process, not just arbitrators.[14]

25. The Commission may wish to consider whether the work on ethics and concurrent proceedings might be referred to Working Group II as topics for possible future work. It might be noted, in respect of the ethics topic, that the Secretariat has received a request by the ICSID Secretariat to embark upon a jointly elaborated code of ethics for arbitrators/conciliators/ mediators/adjudicators.

Electronic Commerce (Working Group IV)

(a) Mobile commerce

26. As noted above, at its forty-eighth session (2015), the Commission had heard a proposal on issues relating to mobile commerce and payments effected with mobile devices (A/CN.9/WG.IV/WP.133). Support was expressed for undertaking work on the legal aspects of the use of mobile devices, especially for its potential relevance for developing countries, but it was noted that while matters relating to payments with electronic means had great relevance for international trade and it might be particularly desirable to update existing UNCITRAL texts in that field, any work proposal required further illustration given the complexity of the subject.[15]

27. The Commission accordingly requested the Secretariat to conduct preparatory work on several topics, including mobile commerce, for future discussion at the Working Group level, with a view to making recommendations on the exact scope, possible methodology and priorities for the consideration by the Commission at its forty-ninth session. As noted above, at its forty-ninth session, the Commission gave the Working Group a mandate to work on identity management and trust services, as well as cloud computing. Preparation of work on mobile commerce has yet to be taken up.

(b) Single windows and paperless trade facilitation

28. At its forty-fourth session (2011), the Commission requested the Secretariat to continue cooperating with other organizations undertaking work on electronic single-window facilities and to contribute to that work, as appropriate.[16]

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[12] Ibid., paras. 163–164.

[13] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 242.

[14] Ibid., para. 254.

[15] Ibid., *Seventieth session, Supplement No. 17* (A/70/17), para. 357.

[16] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 240.

29. The Secretariat has continued that work and reported annually to the Commission on relevant developments.[17]

30. In view of the regained momentum of e-commerce at the international level and the need for a sound legal framework to accompany a global transformation of the economy in the digital era, the Commission may wish to consider whether preparatory work on mobile commerce or other topics might be taken up following completion of the work on identity management and cloud computing.

Security Interests

31. At its fiftieth session, in addition to granting a mandate for preparation of a practice guide on secured transactions, which could include relevant issues relating to financing of micro-business, the Commission considered possible future work in the area of secured transactions on the topics listed above.[18]

32. Various suggestions were made: (a) with respect to warehouse receipts, that the Secretariat should prepare a study on the feasibility and desirability of preparing an international legal standard; (b) with respect to intellectual property licensing, that the Commission might prepare a text on contractual issues, given their importance and the fact that there were gaps in the law relating to them; and (c) with respect to the use of alternative mechanisms to resolve disputes arising in the context of secured transactions, that model rules might be prepared to address arbitrability and third-party issues. Those suggestions did not receive sufficient support for referral to a working group, but the Commission decided to retain those topics on the future work agenda for further discussion at a future session, without assigning any priority to them; a proposal on real estate financing was not retained.[19]

3. Additional proposals for possible future work

(a) Judicial sale of ships

33. At its fiftieth session, the Commission also heard a proposal by the Comité Maritime International (CMI) on possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/923). After discussion,[20] the Commission agreed that additional information on the breadth of the problem would be useful. It was suggested that the CMI might seek to develop and advance the proposal by holding a colloquium in order to provide additional information to the Commission to enable it to reconsider the proposal and take an informed decision at a future session.

34. The Commission decided not to refer the proposal to a working group at that time, but agreed that UNCITRAL, through its secretariat, and States would support and participate in a colloquium to be initiated by CMI to discuss and advance the proposal.

35. The CMI convened a colloquium with the support of the Government of Malta, in Valletta on 27 February 2018. The Commission will have before it a document indicating the conclusions of that colloquium and containing a proposal by the Governments of Malta and Switzerland (A/CN.9/944) for possible future work by UNCITRAL on this topic.

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[17] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 86–87; *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 313; *Sixty-ninth session, Supplement No. 17* (A/69/17), paras. 142, 145; *Seventieth session, Supplement No. 17* (A/70/17), para. 229; *Seventy-first session, Supplement No. 17* (A/71/17), paras. 238–240; and *Seventy-second session, Supplement No. 17* (A/72/17), para. 128.

[18] *Seventy-second session, Supplement No. 17* (A/72/17), paras. 218–229.

[19] The Commission was informed that a delegation intended to prepare and submit a study on warehouse receipts for future consideration. Ibid., para. 225.

[20] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), paras. 456–465.

(b) Civil aspects of asset tracing and recovery

36. At its fifty-second session (December 2017), Working Group V (Insolvency Law) heard a brief introduction to a proposal by the United States of America for possible future work on civil asset tracing and recovery.[21] The Working Group exchanged preliminary views on the proposal, with a view to having a more considered discussion at a future session.[22] Further details of the proposal may be available at the current session.

III. Celebration of the 60th anniversary of the New York Convention

37. The Commission may wish to note that 2018 marks the sixtieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (the "New York Convention"). A special programme to celebrate that anniversary will be held during the fifty-first session of the Commission on Thursday 28th June. To inform the Commission on developments with respect to the Convention, and to encourage an exchange of views on the promotion and application of the Convention, as well as on coordination and cooperation efforts, the Commission will hear a summary of achievements in the field and views of experts at the occasion of a celebration event. The Commission may wish to note that the Secretariat will seek to make full use of the event associated with that anniversary to encourage further treaty actions in respect of the New York Convention. The draft convention on enforcement of international settlement agreements resulting from mediation, which is to be considered by the Commission at its current session, will also be introduced.

38. Information about the anniversary program is available on the UNCITRAL website, at http://www.uncitral.org/pdf/english/events/Program_60_NYC.pdf.

39. The Secretariat will provide an oral report on the proceedings to the Commission.

IV. Technical cooperation and assistance activities

40. At its twentieth session (Vienna, 20 July–14 August 1987), the Commission stressed the importance of training and technical assistance were important activities that should be given a higher priority than in the past.[23]

41. The Commission and the General Assembly have since reiterated their importance. More recently, in its resolution 72/113 of 7 December 2017, the General Assembly reaffirmed the importance, in particular for developing countries and economies in transition, of the technical cooperation and assistance work of the Commission. The General Assembly also reiterated its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to "support the technical cooperation and assistance programme of the Commission and to cooperate with the Commission and coordinate their activities with those of the Commission in the light of the relevance and importance of the work and programmes of the Commission for the promotion of the rule of law at the national and international levels and for the implementation of the international development agenda, including the achievement of the 2030 Agenda for Sustainable Development."

42. The General Assembly further stressed the need to strengthen support to Member States, upon their request, in the domestic implementation of their respective

[21] The proposal is contained in document A/CN.9/WG.V/WP.154.

[22] A/CN.9/931, para. 95.

[23] *Official Records of the General Assembly, Forty-second Session, Supplement No. 17* (A/42/17), para. 335.

international obligations through enhanced technical assistance and capacity-building, and welcomed the efforts of the Secretary-General to ensure greater coordination and coherence among United Nations entities and with donors and recipients. The "Guidance Note on Strengthening United Nations Support to States, Upon Their Request, to Implement Sound Commercial Law Reforms" lists most forms of technical assistance activities that may be relevant in the area of commercial law.[24]

A. Designing a strategy for UNCITRAL technical assistance

43. "Technical assistance" within the context of the Commission's work programme includes essentially three types of activities: (a) dissemination of information to promote the adoption of UNCITRAL instruments and texts; (b) assistance to reform of commercial law at the domestic or regional level (primarily related to UNCITRAL instruments); and (c) information and capacity-building activities intended to support uniform interpretation of UNCITRAL instruments. The existing mandate and policy framework for technical assistance activities offers the Secretariat a sufficiently broad and flexible mandate to engage in most of the types of technical assistance and capacity-building activities that could be relevant to our field of expertise.

44. However, the Secretariat's current level of financial and human resources has limited its ability to deliver technical assistance and capacity-building at a significantly larger scale. Technical assistance activities have remained largely reactive (i.e. the Secretariat has in most instances responded to requests to participate in conferences and seminars with a limited impact on law reform or capacity-building. Moreover, the Secretariat has not so far developed a global strategy for technical assistance, including specific strategies that would group together UNCITRAL instruments by the broad but interrelated areas of law.

45. The Secretariat has considered the available options for strengthening its technical assistance programme and translating it into a longer-term technical assistance plan, which would also include shorter-term priorities. They include, on the one hand, a commitment by the Secretariat to achieving efficiency gains through sharper focus, consistent monitoring, effective evaluation and better prioritization of activities and on the other hand, an increased effort by the Secretariat to develop strategic partnerships and raise funds in order to structure and deliver a more focused and results-oriented technical assistance programme.

1. Priorities for technical assistance and promotion activities

46. Three elements play a role in establishing the relative priority of technical assistance activities: the type of activity; the region or country affected by the activity; and the specific subject matter. Since 2015, the Secretariat has a procedure in place for the systematic consideration and recording of technical assistance activities. This system has been further enhanced by integrating all activities (including those initiated at the UNCITRAL Regional Centre for Asia and the Pacific) into a single database. This will allow the Secretariat to keep track of past activities, the countries

[24] They include: undertaking briefing missions and participating in seminars and conferences, organized at both regional and national levels, assisting countries in assessing their trade law reform needs, including by reviewing existing legislation; assisting with the drafting of national legislation to implement UNCITRAL texts; assisting multilateral and bilateral development agencies to use UNCITRAL texts in their law reform activities and projects; providing advice and assistance to international and other organizations, such as professional associations, organizations of attorneys, chambers of commerce and arbitration centres, on the use of UNCITRAL texts; and organizing training activities to facilitate the implementation and interpretation of legislation based on UNCITRAL texts by judges and legal practitioners (see *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17), para. 262 and annex II).

in which they took place and the subject matters covered and thereby facilitate better future planning.

47. The Secretariat will assign highest priority to developing a technical assistance programme to support States (directly or at the request of another international organization) in carrying out commercial law reform, in particular (although not exclusively) where it involves the drafting and adoption of legislation implementing a UNCITRAL instrument (in particular in areas or regions identified as short or medium-term priority). The second degree of priority will be assigned to capacity-building activities in connection with the implementation and application of UNCITRAL instruments or the development of new instruments. The Secretariat will support the implementation of both types of activity by the development of standard documentation and information materials, distance learning and on-line capacity-building tools. Accordingly, the Secretariat will scrutinize and more strictly prioritize participation in briefing missions, conferences, symposia, colloquia, seminars, courses or lectures without a direct connection to law reform or capacity-building, according to their potential impact and effectiveness for the purpose of promoting UNCITRAL instruments or a particular area of ongoing work.

2. Global and regional partners

48. Partners of UNCITRAL technical assistance activities have traditionally included organizations of the United Nations system, other international organizations, government institutions, academia, and international and domestic non-governmental organizations.

49. There has been progress towards integrating UNCITRAL activities within the context of initiatives led by other agencies, including activities of the World Bank in the area of insolvency and secured transactions; of the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Regional Economic Commission for Asia and the Pacific (ESCAP), in the area of electronic commerce; of the Asia-Pacific Economic Cooperation (APEC) and the Association of Southeast Asian Nations (ASEAN) in the area of secured transactions and online dispute resolution; of the European Bank for Reconstruction and Development (EBRD) and World Bank in the area of public procurement PPPs.

50. In some instances, regional channels have been instrumental to the implementation of UNCITRAL texts, as has been the case, for instance, in the adoption of UNCITRAL texts in the field of arbitration and electronic commerce by the States parties to the North American Free Trade Agreement (NAFTA), and by certain member States of the Association of Southeast Asian Nations (ASEAN). The Asia-Pacific Economic Cooperation (APEC) is also becoming an increasingly effective forum for the raising awareness about the importance of adopting UNCITRAL texts, for instance in the area of secured transactions.

51. The Secretariat intends therefore to expand and deepen its strategic partnerships both at the global as well as at the regional level. In doing so, the Secretariat has adopted a flexible approach consisting of weighing the benefits not only of institutional partnerships with international organizations, but also of offering a UNCITRAL component to country-led cooperation schemes capable of raising the interest or need for trade law harmonization. Examples include the Trans-Pacific Partnership (TPP) and the Belt and Road Initiative.

52. It should be noted that UNCITRAL presence in the Asia-Pacific region through the UNCITRAL Regional Centre (RCAP) in Incheon City (Republic of Korea) has proven crucial to facilitate interaction with regional stakeholders and expand the range of technical assistance activities in the region. Although the Secretariat has not yet conducted a systematic evaluation of the activities of RCAP, it is obvious that RCAP has been very successful in raising awareness about UNCITRAL and its work in the region. RCAP plays a unique role in identifying needs for law reform and technical assistance in the Asia-Pacific region and in maintaining contacts with country focal points for UNCITRAL matters or promoting their establishment, in

those countries where no focal point exists. RCAP also has an important role to play as a vehicle for testing the effectiveness of technical assistance by ITLD or the relevance of its work plan.

3. Means of delivery

53. An essential element of a more focused and responsive technical assistance programme is the tailoring of the means of delivery to the needs of the recipient, rather than to the internal considerations of the provider. In a demand-driven technical assistance programme, different tools and methods may need to be offered, depending on the type of assistance that is requested.

(a) Technical assistance to commercial law reform

54. The technical legislative assistance provided by the Secretariat has so far been predominantly geared at promoting the implementation of UNCITRAL texts. However, a reading of the mandate of UNCITRAL in the light of the Sustainable Development Goals would call for a broader assistance to support countries carrying out legal reform to pursue economic, human and social development. In order to be more fully responsive to requests for technical assistance, the Secretariat should devise programmes that enhance the impact of the implementation of an UNCITRAL instrument by modernizing other relevant areas of commercial law. Ideally, the role of the Secretariat in response to a specific demand for assistance should go beyond merely reviewing draft bills and should aim at:

(a) Identifying applicable internationally accepted commercial law standards and related readily available tools and expertise designed to facilitate their enactment;

(b) Identifying all stakeholders relevant to the commercial law reform, including domestic reform constituencies, international experts, various donors working in the same or a related field, etc., and appropriate focal points in each entity to coordinate a specific reform, in order to facilitate proper consultations with them, where necessary;

(c) Advising the recipient country, as appropriate, on additional legislative measures to accompany the adoption of a new law (e.g. other necessary laws, regulations, guidance and/or codes of conduct) and ensuring the proper expert assessment of the legislative package before the law is adopted.

55. To some extent, this expanded scope of activities would only be possible in the context of a sufficiently funded law reform program. However, the Secretariat is considering steps that can be made without additional resources.

(b) Promotion of adoption of UNCITRAL instruments

56. Most instances of technical legislative assistance provided by the Secretariat so far have taken the form of comments and suggestions on draft legislation implementing a UNCITRAL text. It is assumed that this type of desk review of instruments will continue to play a central role in the future. Nevertheless, with a view to increasing the effectiveness and impact of its assistance, the role of the Secretariat in response to a specific demand for assistance should go beyond merely reviewing draft bills.

57. The Secretariat should deepen its cooperation with other international organizations, particularly of the United Nations system (such as UNCTAD and UNIDO) that offer support and assistance in broader areas of economic development that have a discrete commercial law component for which the expertise of UNCITRAL may be relevant. When UNCITRAL joins specific programmes or projects of those organizations, it seizes an opportunity to ensure that the implementation of UNCITRAL instruments became an integral component of a broader policy package offered to developing countries to promote trade and investment.

58. The same rationale calls for closer cooperation to explore synergies with other private law formulating agencies. At the last tripartite meeting of UNCITRAL, Unidroit and the Hague Conference on Private International Law, the three organizations agreed on exploring common promotion and technical assistance programmes in the areas in which the three organizations have developed complementary instruments. The synergy between existing instruments on choice of law (Hague Conference), general contract law (Unidroit) and sales law (UNCITRAL), is already the object of an ongoing cooperation project. Further topics include, for instance, judicial cooperation (Hague Conference), dispute settlement (UNCITRAL) and civil procedure (Unidroit); or insolvency (UNCITRAL) and capital markets law (both Hague Conference and Unidroit).

(c) Capacity-building for uniform interpretation of UNCITRAL texts

59. The Secretariat is also considering measures to enhance its technical assistance, promotion and outreach activities, and deepen their impact. The Secretariat believes that its limited capacity-building capabilities could be expanded even without additional human resources by developing a toolkit consisting of various complementary components, such as:

(a) Information kits (for instance in the form of a series of video lectures) on UNCITRAL texts, including both general information materials to be posted on the UNCITRAL website (similarly to the Audiovisual Library of International Law developed by the Codification Division of the Office of Legal Affairs)[25] or on UNCITRAL social media, and materials to be used in long-distance learning; and

(b) Information materials grouping UNCITRAL instruments by broader areas (e.g. procurement and PPPs; sales law, electronic commerce and commercial fraud; secured transactions) and showing their relevance from the point of view of the Sustainable Development Goals, and international benchmarks and indicators (such as the World Bank Doing Business and Investment Competitiveness reports).

60. For the purposes of ensuring coherence and consistency, the Secretariat has developed standardized project documents capable of being fine-tuned to suit donor needs. The Secretariat has sought the support of other organs of the United Nations system involved in training and capacity-building to develop standardized evaluation questionnaires for technical assistance and promotion activities, in particular training-related.

4. Priorities for 2018/2019

61. The Secretariat has adopted two general criteria for setting priorities for the promotion of UNCITRAL texts. First, the Secretariat sees it as a priority to promote the adoption of newly adopted treaties, with a view to fostering their early entry into force. Second, the Secretariat promotes the universal adoption of fundamental treaties of international trade law, in particular, by those countries having yet to develop an international trade law framework, or having an obsolete one.

62. The treaties currently considered under this approach include, on the one hand, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) (the "Mauritius Convention on Transparency"),[26] and, on the other hand the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[27] (the New York Convention, a United Nations convention adopted prior to the establishment of the Commission, but actively promoted by the Commission), whose universal adoption has already been explicitly called for by the

[25] Available at http://legal.un.org/avl/intro/welcome.avl.html.

[26] United Nations General Assembly, *Resolution 69/116* of 10 December 2014, Annex.

[27] United Nations, *Treaty Series*, vol. 330, No. 4739.

General Assembly,[28] and the United Nations Convention on Contracts for the International Sale of Goods (CISG).[29]

63. For the years 2018/2019 the UNCITRAL secretariat has identified the following priorities for promotion and technical assistance:

(a) Promotion of accession to the New York Convention within the year UNCITRAL celebrates the 60th anniversary of its adoption, and technical assistance in connection with its implementation;

(b) Promotion of ratification of the Mauritius Convention on Transparency and technical assistance in connection with its implementation;

(c) Promotion of accession to the CISG with a view to the celebration of the 40th anniversary of its adoption in the year 2020, and technical assistance in connection with its implementation.

B. Resources and funding

64. The technical assistance activities are almost entirely funded through voluntary contributions to the Trust Fund for UNCITRAL Symposia.

65. The Secretariat continues to explore alternatives for increasing resources for technical assistance activities, including through in-kind contribution. In particular, a number of missions have been funded, in full or in part, by the organizers.

66. As indicated in the relevant report (A/CN.9/947, para. 14) RCAP relies on the annual financial contribution from the Incheon Metropolitan City to the Trust Fund for UNCITRAL Symposia to meet the costs of its operation and programme (currently set at USD $450,000 per annum for the period 2017–2021). That contribution also includes an amount for travel and operational activity costs of RCAP that nearly matches the yearly allotment usually available from other sources under the UNCITRAL Trust Fund for UNCITRAL Symposia. The Commission may wish to express its appreciation to the Government of the Republic of Korea and to the Municipality of Incheon for their generous support to the regional centre.

[28] United Nations General Assembly, *Resolution 62/65* of 8 January 2008, para. 3.

[29] United Nations, *Treaty Series*, vol. 1489, No. 25567.